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No. 83-951

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1983

DONALD E. PERCY, et al.,

Petitioners,

v.

GERALDINE BUCKHANON, et al.,

Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

BRIEF FOR RESPONDENT AND APPENDIX

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No. _____

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DONALD E. PERCY, et al.,

Petitioners,

v.

GERALDINE BUCKHANON, et al.,

Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

QUESTIONS PRESENTED

I. Where a district court issues a preliminary injunction order enjoining state officials from reducing or terminating public assistance benefits, does the Eleventh Amendment prohibit payment of the wrongfully reduced or terminated benefits for the period of time after the preliminary injunction order is entered?

II. Does the scope of review from a timely appeal of an order clarifying a preliminary injunction necessarily extend back to include the unappealed preliminary injunction order?

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STATEMENT OF THE CASE

The Statement of the Case contained in the Petition is not entirely complete or accurate, and respondent adds the following information. This case was filed to challenge the form of notices routinely sent to recipients of Aid to Families with Dependent Children benefits (hereinafter, AFDC), Medical Assistance (hereinafter, MA) and Food Stamps. Buckhanon, 533 F.Supp. at 825 (App. 152). The respondents, plaintiffs below, originally requested that a class be certified consisting of all AFDC, MA and Food Stamp recipients, but the district court certified a class of only those recipients who received notices reducing or terminating their benefits due to implementation of the Omnibus Budget Reconciliation Act (hereinafter, OBRA), as follows:

> All persons in Wisconsin whose AFDC, Food Stamp, and/or Medical Assistance benefits have been or are being reduced or terminated as a result of the implementation of those provisions of the Omnibus Budget Reconciliation Act which are reflected in the foldout and accompanying notices generated by the defendants' December 12, 1981 conversion.

Buckhanon, 533 F. Supp. at 840 (App. 226).

The district court determined that preliminary injunctive relief was appropriate only for certain members of the plaintiff class, namely, those whose benefits were reduced or terminated because of seven specific OBRA provisions. Buckhanon, 533 F.Supp. at 838 (App. 216-217). The district court denied the motion for preliminary injunctive relief on behalf of the other members of the plaintiff class. The district court's January 14, 1982 order also required that benefits be reinstated until adequate

notices were provided the affected members of the plaintiff class. Buckhanon, 533 F.Supp. at 840 (App. 227-228).

The petitioners, defendants below, complied with the order requiring them to issue revised notices to respondents. Buckhanon, 708 F.2d at 1214 (App. 125). Their dispute with respondents now centers on whether the January 14, 1982 order to reinstate benefits required January 1982 benefits to be provided respondents. In a June 1, 1982 order the district court held that the January 14, 1982 order required petitioners to provide January 1982 benefits to respondents (App. 275). The Seventh Circuit affirmed and modified the June 1, 1982 order, holding that the Eleventh Amendment prohibited payment of benefits before January 14, 1982, the date of the preliminary injunction order. Buckhanon, 708 F.2d at 1217 (App. 137-138). No final judgment has been issued.

SUMMARY OF ARGUMENT

Respondents contend that the Petition for a Writ of Certiorari should not be granted because the decision of the Court of Appeals for the Seventh Circuit is consistent with decisions of this Court and the other Circuits in applying the Eleventh Amendment prohibition against retroactive monetary relief. The Seventh Circuit correctly barred monetary relief for the period of time before the date of entry of the district court's order. Respondents contend further that the Petition should not be granted to review the Seventh Circuit's decision not to extend the scope of its review of an interlocutory order under 28 U.S.C. §1292(a)(1) to include an earlier unappealed interlocutory order. The Seventh Circuit carefully exercised its discretion in limiting the scope of its review.

ARGUMENT

I. The Decision Of The Seventh Circuit Does Not Violate The Eleventh Amendment.

A. The decision of the Seventh Circuit correctly interpreted the Eleventh Amendment and decisions of this Court in drawing the line between prospective and retroactive relief.

On January 14, 1982 the district court ordered the petitioners to:

> reinstate to their original level the AFDC, MA, and FS benefits of those members of the plaintiff class whose aid was reduced or terminated as a result of any of [seven OBRA provisions]...until those class members whose aid was reduced or terminated as a result of these OBRA provisions are provided with adequate advance notice of the reasons for the proposed reduction or termination, including sufficient case specific information to inform these recipients of the legal and factual basis of the defendants' proposed actions.

Buckhanon, 533 F.Supp. at 840 (App. 227-228). In response to petitioners' request to clarify this order the district court on June 1, 1982 entered the following order:

> (3) pursuant to the Court's order of January 14, 1982, defendants must pay eligible plaintiffs AFDC benefits for January of 1982 at December 1981 benefits;
>
> (4) pursuant to the Court's order of January 14, 1982, defendants must pay for the medical services received by eligible plaintiffs after January 14, 1982;...

(App. 275). In reviewing the June 1, 1982 order, the Seventh Circuit affirmed the award of AFDC and MA benefits to respondents beginning on January 14, 1982. The Seventh Circuit concluded that the Eleventh Amendment prohibited an award of benefits for the period before January 14, 1982. In reaching its decision, the Seventh Circuit drew the line between the prospective and retroactive award of benefits at the date of entry of the district court's order.

The Seventh Circuit's decision is clearly supported by decisions of this Court. In Edelman v. Jordan, 415 U.S. 651, 94 S.Ct. 1347, 39 L.Ed.2d 662 (1974) and Milliken v. Bradley, 433 U.S. 267, 97 S.Ct. 2749, 53 L.Ed.2d 745 (1977) this Court concluded that the Eleventh Amendment prohibits federal courts from awarding retroactive monetary relief to individuals wronged by the state and limits the award of monetary relief to costs necessary to ensure prospective compliance with injunctive orders. In determining what is retroactive relief and what is prospective relief, this Court has held that the date of entry of the district court's order is the dividing line. See, Edelman, Milliken and Fitzpatrick v. Bitzer, 427 U.S. 445, 451, 96 S.Ct. 2666, 2669, 49 L.Ed.2d 614 (1976). In this case, contrary to the assertions of petitioners,

the Seventh Circuit correctly applied the rule set forth by this Court by awarding respondents benefits only for that period of time after the date of the district court's order.

B. The decision of the Seventh Circuit is consistent with decisions in the other circuits and petitioners have shown no conflict among them.

In reaching its decision, the Seventh Circuit found support in the decisions of the Fourth and First Circuits in Kimble v. Solomon, 599 F.2d 599 (4th Cir. 1979), cert. denied, 444 U.S. 950, 100 S.Ct. 422, 62 L.Ed.2d 320 (1980), and Coalition for Basic Human Needs v. King, 654 F.2d 838 (1st Cir. 1981). In both cases the courts found that the Eleventh Amendment bar against retroactive monetary relief did not prohibit an order requiring state welfare officials to provide Medical

Assistance coverage and AFDC benefits to individuals as a necessary consequence of injunctive relief.

In Kimble, the district court held that the State of Maryland had not complied with adequate notice requirements and, thus, had wrongfully reduced MA benefits. On appeal, the Fourth Circuit concluded that although retroactive relief would be barred, the court could order the state to provide benefits prospectively until the state issued adequate reduction notices.[1]

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[1]Contrary to the assertion of petitioners, the plaintiff class in this case includes both individuals who received MA benefits because of their AFDC eligibility and individuals who received MA only. See the description of the class certified by the district court, Buckhanon, 533 F.Supp. at 840 (App. 226), and discussion in the Statement of the Case, supra. It is not clear from the Kimble decision whether the class certified there included both individuals receiving MA only and individuals receiving both AFDC and MA. This distinction, however, is not significant for Eleventh Amendment purposes.

In King, the First Circuit issued an injunction pending appeal ordering the Commonwealth of Massachusetts to resume AFDC payments. Petitioners assert that the King decision does not support the Seventh Circuit's decision in this case because the administrative scheme for issuing AFDC checks in Massachusetts differs from that in Wisconsin. Massachusetts issues AFDC benefits in semi-monthly installments; Wisconsin issues the entire monthly benefit at one time. The court in King in a July 13, 1981 order directed Massachusetts to issue the second semi-monthly checks for July. Petitioners' argument assumes that the issuance of two checks per month must mean that AFDC recipients in Massachusetts are also determined eligible on a semi-monthly basis, rather than on a monthly basis as in Wisconsin. There is, however, no

indication in the King decision that this assumption is correct. The more reasonable assumption is that Massachusetts, like Wisconsin, determines AFDC eligibility on a monthly basis and simply pays benefits in two installments, an option also permitted under the Wisconsin administrative scheme. See, PW-PA 20.11(3) Wis. Adm. Code and discussion infra.

The decisions in Kimble and King support the decision in this case.

C. Wisconsin law permits payment of AFDC and/or Medical Assistance benefits at any time during a calendar month and the award of benefits after January 14, 1982 is consistent with state law and the Eleventh Amendment.

The Seventh Circuit concluded that although the State of Wisconsin usually issues benefits at the beginning of the

month it nonetheless had the ability to provide AFDC benefits and Medical Assistance coverage for January 1982 on any day during that month. The court based its conclusion on state administrative rules which require regular on-going benefit determination and issuance throughout the month.

State regulations provide that, in the normal course of events, monthly AFDC checks should be issued by the fifth day of the month. PW-PA 20.11(3) Wis. Adm. Code. This regulation is intended to protect AFDC recipients from irregular patterns of benefit issuance.[2] The Seventh Circuit examined this regulation regarding the

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[2]Federal regulations require states to provide financial assistance and medical care on a regular on-going basis without delays due to a state's administrative process. 45 C.F.R. §206.10(c)(5)(i). The Wisconsin regulation implements this federal regulation.

time for issuance of AFDC checks and concluded that it was not determinative of where to draw the line between prospective and retroactive relief.

Petitioners argue that the Seventh Circuit should have interpreted this regulation as a bar to an award of any January 1982 benefits, even payment of benefits after the January 14, 1982 district court order. Petitioners assert that the state's liability for all January benefits had already accrued by the time injunctive relief was granted and, thus, any award of monetary relief for January impermissibly disrupts the state's administrative system. In petitioners' view, this disruption is prohibited by the Eleventh Amendment. The Seventh Circuit acknowledged petitioners' argument but concluded that potential disruption of the state's usual pattern of benefit issuance is not the test for distinguishing prospective from retroactive relief:

> Although Wisconsin usually issues checks on the 5th of the month, there is no contention that the Department lacks the authority to do so on the 14th.

Buckhanon, 708 F.2d at 1216 (App. 134-135).

Similarly, the court order in Edelman that Illinois begin to process applications in a timely fashion and provide benefits no later than 30 or 45 days after the date of application to aged, blind and disabled individuals certainly disrupted the state administrative scheme. However, the date for drawing the Eleventh Amendment line is not when the state can most efficiently adjust to its court-imposed obligation. Rather, as this Court has stated, the date to draw the line is the date on which the district court order is entered.

Petitioners' interpretation of where the line should be drawn was properly rejected by the Seventh Circuit.

Petitioners' position would require a court to determine when the administrative mechanism for printing and issuing AFDC checks and MA cards is about to begin, whether it is in the course of being completed, or has, in fact, been completed. In this case, for example, January 1982 AFDC eligibility had already been determined and the checks had been printed by mid-December 1981. (¶6, Stumbras Affidavit, App. 311).[3] January 1982 MA determinations were begun on December 1, 1981 and completed as of December 16, 1981. (¶¶ 10, 11 and 12, Preizler Affidavit, App. 320-322). Therefore, accepting petitioners' analysis that the Eleventh

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[3]Appendix citations numbered 309 et seq. refer to the appendix submitted with respondents' brief. Respondents have numbered their appendix sequentially to petitioners' appendix.

Amendment line must be drawn so as not to disrupt a state's usual administrative processes, the district court in this case would have had to enter an order before December 1, 1981 in order to affect January 1982 benefits.

The Seventh Circuit correctly refused to apply this analysis, first, because it is not required by the Eleventh Amendment or this Court's decisions and, second, because it imposes an undue burden on district courts and is subject to wide case-by-case variation, depending on the administrative mechanism from state to state. Instead, the Seventh Circuit limited the amount of the state's monetary liability by drawing the Eleventh Amendment line at the date of entry of the district court's order. This is all that is required by the Eleventh Amendment.

II. Appeals From Interlocutory Orders Are Limited Grants Of Jurisdiction And The Seventh Circuit Properly Limited Its Jurisdiction And The Scope Of Review.

A. The Seventh Circuit had no jurisdiction to review an order granting a preliminary injunction which was not appealed within the thirty-day time limit and which petitioners did not include in their notice of appeal, despite the opportunity to do so.

The petitioners have requested this Court to review the Seventh Circuit's decision that an order granting a preliminary injunction is not appealable unless a notice of appeal is filed within 30 days. The Seventh Circuit's decision is firmly grounded in Rule 4(a) of the Federal Rules of Appellate Procedure.

A review of the chronology of events preceding the appeal shows that petitioners made a deliberate decision not to appeal the adequacy of notice issue.

The district court's order granting preliminary injunctive relief was entered on January 14, 1982. No notice of appeal was filed from that order. After January 14, 1982 the petitioners made an oral motion to clarify the January 14, 1982 order; they also filed a written motion to modify the preliminary injunction because some members of the plaintiff class were not provided adequate notice in time to affect February 1982 benefits. (App. 326-329).

The district court's June 1, 1982 decision and order denied petitioners' motion to modify, concluding that federal regulations requiring timely and adequate notices of reduction and termination of public assistance benefits had been violated by petitioners. (App. 273-275). Petitioners' motion to modify the preliminary injunction clearly implicated the adequacy of notice issue addressed in the preliminary injunction order, but

petitioners chose not to include the denial of their motion to modify in their notice of appeal. (App. 324-325). Their notice of appeal listed two of the five orders entered on June 1, 1982, namely, the orders which: (1) required petitioners to pay AFDC benefits for January and (2) required petitioners to pay for medical services after January 14, 1982. (App. 324-325). Petitioners' notice of appeal was clearly limited to only the Eleventh Amendment issue, as the Seventh Circuit noted in its decision. Buckhanon, 708 F.2d at 1214-1215, fn.4 (App. 127).

Because no timely notice of appeal was filed from either the January 14, 1982 preliminary injunction order or the denial of petitioners' motion to modify that order, the Seventh Circuit correctly concluded that it had no jurisdiction to consider the adequacy of notice issue. The only possible basis for the Seventh Circuit to have reviewed the January 14, 1982 order

would have been if that court chose to exercise its discretion and extend the scope of its review of the June 1, 1982 order clarifying the preliminary injunction to include the unappealed order.

B. The Seventh Circuit's careful exercise of its discretion in limiting the scope of review is in accord with decisions of this Court and other circuits.

Petitioners are requesting this Court to review the Seventh Circuit's decision that the scope of review from the June 1, 1982 interlocutory order was limited. It is clear that 28 U.S.C. §1292(a)(1) is a limited exception to the final judgment rule. That provision has been construed narrowly by this Court. Gardner v. Westinghouse Broadcasting Co., 437 U.S. 478, 480, 98 S.Ct. 2451, 2453, 57 L.Ed.2d 364 (1978); Switzerland Cheese Assn., Inc. v. E. Horne's Market, Inc. 385 U.S. 23, 87

S.Ct. 193, 17 L.Ed.2d 23 (1966).

In this case, the Seventh Circuit adhered to the principles established in its earlier decisions which addressed the scope of review question. In Fern v. Thorp Public School, 532 F.2d 1120 (7th Cir. 1976) and Squillacote v. Local 248, Meat & Allied Food Workers, 534 F.2d 735, 750 (7th Cir. 1976) the Seventh Circuit established that determinations regarding the scope of review are relegated to its discretion and that the Seventh Circuit will "apply the rule foreclosing appeal on a pragmatic basis." Buckhanon, 708 F.2d at 1213 (App. 122). The Seventh Circuit did just that in determining that the Eleventh Amendment issue could be reviewed separately from the adequacy of notice issue.

In comparing this case and Fern, the Seventh Circuit determined that in Fern the unappealed preliminary injunction order had obviously been issued in error and the initial failure to appeal was excusable.

In this case it is clear that petitioners had no excuse for failing to appeal either the district court's January 14, 1982 order or the order refusing to modify the preliminary injunction. It was also clear to the Seventh Circuit that the unappealed preliminary injunction order was not based on an obvious error of law or substantial abuse of discretion. The petitioners in fact chose to comply with it rather than appeal. The fact that petitioners had complied with the preliminary injunction and issued revised notices was properly considered by the Seventh Circuit in exercising its discretion not to review the earlier order.

Contrary to the suggestion by petitioners, this approach is entirely consistent with that adopted by the Third Circuit:

> Because section 1292(a)(1) is an exception to an otherwise fundamental rule of federal appellate jurisdiction, we must construe the scope of the provision with great care and circumspection. (emphasis in original)

Kershner v. Mazurkiewicz, 670 F.2d 440, 447 (3d Cir. 1982).

Petitioners have not explained how the Seventh Circuit's exercise of its discretion conflicts with the standard for review of interlocutory orders in the other circuits. In fact, petitioners agree that this question is relegated to the discretion of an appellate court. Their sole argument is that the Seventh Circuit abused its discretion. Abuse of discretion is not a basis on which this Court should grant a petition for certiorari unless the decision to be reviewed so far departs from the accepted course of procedure that this Court must of necessity intervene. The Seventh Circuit pragmatically weighed the

factors in this case before limiting the scope of its review. Therefore, it is not likely that review by this Court could provide any further instruction or definition regarding the parameters of an appellate court's discretion in reviewing interlocutory orders.

CONCLUSION

The Eleventh Amendment prohibition against awarding retroactive benefits to individuals wronged by the state was not violated in this case. The petitioners have not shown any inconsistency between the decision in this case and this Court's rule that the date of the district court's order marks the line between retroactive and prospective relief. Moreover, in drawing the line at the date of the district court's order, the Seventh Circuit reasonably interpreted Wisconsin law. The other circuits which have considered this question have also adhered to this straightforward interpretation of where to draw the line.

Neither should the writ be granted to review the procedural question presented by petitioners regarding the scope of review from an appeal of an interlocutory

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

GERALDINE BUCKHANON, et al.,

Plaintiffs,

v. Case No. 81-C-1601

DONALD PERCY, et al.,

Defendants.

AFFIDAVIT

STATE OF WISCONSIN)
) SS.
COUNTY OF D A N E)

Bernard J. Stumbras, being duly sworn, says to the court as follows

1. I am Administrator of the Division of Economic Assistance (DEA), Department of Health and Social Services (DHSS) and have been serving in that capacity since July, 1977.

2. DHSS is the single state agency charged with administering the Aid to Families with Dependent Children (AFDC) and Medical Assistnce (MA) programs.

3. DEA is the unit within DHSS responsible for the administration of the AFDC and MA programs.

4. For initial AFDC applications, the local agency enters the information supplied by the applicant into the Computer Reporting Network (CRN). If an AFDC applicant is determined to be eligible by the CRN, the CRN prints a notice of eligibility and the initial AFDC check on the same day the information was entered. The AFDC checks for these applicants are mailed within three (3) to five (5) days of the initial application.

5. If an initial AFDC applicant is found eligible for AFDC benefits, benefits are calculated from the date of application. If application is made on the first of the month and the applicants are eligible as of that date, they will receive a full month's

AFDC payment. If they apply and are eligible later in the month, their benefits are prorated. All subsequent AFDC payments are made on a monthly basis.

6. CRN reviews all available eligibility information for every continuing AFDC recipient on or about the thirteenth day before the end of the month. Pursuant to this review, CRN continues the AFDC grant without change or adjusts or discontinues the AFDC recipients' grants for the subsequent month. The CRN simultaneously prints the appropriate notices and AFDC checks for the subsequent month.

7. AFDC checks for continuing AFDC cases must be issued by the 5th of the month. Section PW-PA 20.11(3), Wis. Adm. Code.

8. In twenty-seven counties, most monthly AFDC checks for continuing AFDC recipients are mailed directly to said recipients by DEA on the last working day of the previous month. These counties are marked with an (x) on Exh. A of this affidavit.

9. In Milwaukee County, most of the monthly AFDC checks for continuing AFDC recipients are mailed directly from Madison to the recipients in the following manner: One-third (1/3) are mailed on the last working day of every month; two-thirds (2/3) are mailed in equal parts on the first and second working days of the month for which payment is intended.

10. In the remaining counties, most of the monthly AFDC checks for continuing AFDC recipients are delivered to the local agency and that agency then mails said checks to

recipients before the fifth of the month for which the payment is intended.

11. In the twenty-seven direct mail counties mentioned in paragraph 7 above, most January, 1982 AFDC checks for continuing AFDC recipients were mailed directly to the recipients on December 31, 1981. (Exhibit A)

12. In Milwaukee County, most January, 1982 AFDC checks for continuing AFDC recipients were mailed on December 31, 1981, January 2 and 3, 1982. (Exhibit A)

13. In counties where the local agency mails the monthly AFDC checks to continuing AFDC recipients, January, 1982 AFDC checks for said recipients were mailed by January 5, 1982. (Exhibit A)

14. In accordance with sec. 49.19(3)(b), Stats. (1979), it is the practice and policy of DHSS to pay AFDC benefits once a month at the beginning of the month.

Dated this 5th day of February, 1982.

/s/ BERNARD J. STUMBRAS
BERNARD J. STUMBRAS, Administrator
Division of Economic Assistance

Subscribed and sworn to before me
this 5th day of February, 1982.

/s/ MARY SOUTHWICK
Notary Public, State of Wisconsin
My Commission: permanent

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

GERALDINE BUCKHANON, et al,

Plaintiffs,

vs. CIVIL ACTION FILE
No. 81-C-1601

DONALD PERCY, et al,

Defendants.

AFFIDAVIT

State of Wisconsin)
) ss.
County of Dane)

I, MARTIN A. PREIZLER, being first duly sworn, on oath depose and say:

1. That I am an adult resident of the City of Madison, Dane County, Wisconsin, am employed by the State of Wisconsin's Department of Health and Social Services as the Director of the Department's Bureau of Health Care Financing, and have been serving in that capacity since July 31, 1977;

2. That in my capacity as Director of the Bureau of Health Care Financing, I am personally and professionally familiar with the interrelationships between federal, state and county agencies in the determination of entitlement to delivery of and payment for health care services under the Wisconsin Medical Assistance Program and Title XIX of the Social Security Act;

3. That the Department of Health and Social Services is the single state agency designated under §49.45(1), Wis. Stats., to administer the delivery of and payment for health care services to persons eligible to receive benefits under Wisconsin's Medical Assistance Program;

4. That pursuant to §49.45(2)(b)2, Wis. Stats., the Department, on April 9, 1981,

contractually engaged the EDS Federal Corporation, a Texas corporation, to act as the fiscal intermediary for Wisconsin's Medical Assistance Program;

5. That in its capacity as fiscal intermediary, EDS Federal's primary function is to process the payment or denial of all claims submitted by health care providers for services rendered to individuals entitled to receive benefits under Wisconsin's Medical Assistance Program, and that in furtherance of that responsibility, EDS Federal is required to maintain timely and accurate information on all persons currently and previously deemed eligible to receive benefits under Wisconsin's Medical Assistance Program;

6. That EDS Federal is required to maintain a master eligibility file

listing all individuals certified to receive benefits under the Medical Assistance Program, and to monthly prepare and mail Medical Assistance Program eligibility cards to persons that file requests as being entitled to program benefits during the following month;

7. That pursuant to §49.46(1)(a)1, Wis. Stats., any person included in a grant in aid to families with dependent children under §49.19, Wis. Stats., is automatically entitled to receive benefits under Wisconsin's Medical Assistance Program. That determination with respect to a person's entitlement to an AFDC grant is made by the county agency in which that person resides;

8. The Division of Economic Assistance is responsible for notifying EDS Federal of any additions

to or deletions from the master eligibility file which are occasioned by a change in the status of a person's entitlement to AFDC benefits. This is accomplished by the local agency worker entering the individual Medical Assistance case's data into the Computer Reporting Network (CRN). This data is then processed by CRN and a tape is produced. This tape is then placed into the CRN-EDS Federal "interface." This "interface" program converts the CRN data into a new tape which EDS Federal's computer can use. This tape is then flown to Dallas, Texas, EDS Federal's corporate headquarters, where it is used to update the Medical Assistance master eligibility file;

9. That EDS Federal then transmits the new eligibility data to its Madison, Wisconsin office, where

Medical Assistance recipients' cards are printed and mailed;

10. That the procedure described in paragraphs 8 and 9 above is performed daily for persons filing original Medical Assistance applications, persons whose Medical Assistance eligibility status has changed (i.e.: from medically needy to categoricaly needy, or vice versa), or those whose medical assistance eligibility is discontinued. Medical Assistance cards are printed and mailed daily for the first two categories of these individuals. On the third weekend of a month, a major Medical Assistance card print occurs. On that weekend, most of the Medical Assistance cards to be issued for the next month are printed and mailed so that they are received approximately five (5) days before the first day of

the next month. Those Medical Assistance recipients whose Medical Assistance eligibility has been discontinued and whose eligibility data has been processed to EDS Federal in Dallas, Texas, as of the third weekend of a month, do not receive Medical Assistance cards;

11. That the Division of Economic Assistance of the Department of Health and Social Services prepared and delivered on December 15, 1982, to EDS Federal a special conversion tape identifying all deletions to the master eligiblity file occasioned by changes in state and federal laws (Chapter 93, State Laws of 1981, and federal P.L. 97-35, respectively), relating to entitlement to AFDC benefits;

12. That on December 16, 1981, EDS Federal processed the special conversion tape provided it by the

Division of Economic Assistance, and that as a result of said processing, the eligibility of 37,884 individuals was cancelled effective December 31, 1981;

13. That on December 18, 1981, at approximately 6:00 P.M. EDS Federal commenced computer processing efforts to produce Medical Assistance cards for individuals eligible to receive benefits under the Medical Assistance Program during the period January 1 through January 31, 1982. That said processing efforts which encompassed all additions to and deletions from the master eligibility file up to and including December 16, 1982, resulted in the production of 214,796 Medical Assistance identifications cards;

14. That on December 22, 1981, EDS Federal deposited in the United States Mail at Madison, Wisconsin, the

214,746 Medical Assistance cards referred to in paragraph 12;

15. That no Medical Assistance card was produced for, or mailed to any of the 37,884 individuals identified on the special conversion tape prepared by the Division of Economic Assistance and delivered to EDS Federal on December 15, 1981.

/s/ MARTIN A. PREIZLER
Martin A. Preizler
Director, Bureau of Health Care Financing
Department of Health and Social Services

Subscribed and sworn to before me
on this 5th day of February, 1982.

/s/ JEAN E. GILPIN
Notary Public, State of Wisconsin
My Commission is Permanent.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

GERALDINE BUCKHANON, et al.,

Plaintiffs,

v. Case No. 81-C-1601

DONALD PERCY, et al.,

Defendants.

NOTICE OF APPEAL

The defendants, Donald E. Percy, Bernard J. Stumbras and Kenneth Rentmeester, hereby appeal to the United States Court of Appeals for the Seventh Circuit from two separate orders entered in this action on June 1, 1982, issued in response to defendant's oral motion to clarify a preliminary injuntion which orders:

1.) require defendants to pay eligible plaintiffs AFDC benefits for January of 1982 at December 1981 benefits; and

2.) Defendants to pay for medical services (medical assistance) received by eligible plaintiffs after January 14, 1982.

Dated at Madison, Wisconsin this 1st day of July, 1982.

BRONSON C. LA FOLLETTE
Attorney General

/s/ F. THOMAS CREERON III
F. THOMAS CREERON III
Assistant Attorney General

Attorneys for Defendants

Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

GERALDINE BUCKHANON, et al.,

Plaintiffs,

v. Case No. 81-C-1601

DONALD PERCY, et al.,

Defendants.

NOTICE OF MOTION

TO: Mary Fisher Bernet
Anne L. DeLeo
Legal Action of Wisconsin, Inc.
326 West Brown Street
Milwaukee, Wisconsin 53212
Attorneys for Plaintiffs

PLEASE TAKE NOTICE that defendants, by their attorneys, Bronson C. La Follette, Attorney General and Waltraud A. Arts, Assistant Attorney General, will move the court, the Honorable Robert W. Warren, presiding, at the Federal Building, 517 East Wisconsin Avenue, Milwaukee, Wisconsin, at a date and

time to be set by the court, for an order modifying the terms of the permanent injunction issued on January 14, 1982, in accordance with the following motion:

MOTION TO MODIFY THE
PRELIMINARY INJUNCTION IN REGARD
TO THE 150% GROSS INCOME TEST

NOW COME the defendants, by their attorneys, Bronson C. La Follette, Attorney General and Waltraud A. Arts, Assistant Attorney General, and move the court for relief from the permanent injunction issued on January 14, 1982, in regard to the plaintiffs whose AFDC and/or MA benefits were terminated for February, 1982, due to the application of the OBRA 150% gross income test. The defendants request relief from the portion of the order which requires them to reinstate the plaintiffs' AFDC

and MA benefits until they can be given adequate advance notice of the reasons for the proposed reduction or termination.

This motion is based on the facts set forth in the affidavit of Bernard Stumbras filed herewith. Briefly, a programming error resulted in the notice approved by the court on January 20, 1982, being mailed to the county agency, rather than directly to the plaintiffs affected by the 150% gross income test. The county agencies have forwarded the notices to the plaintiffs.

The defendants request the court modify the injunction in regard to these plaintiffs by requiring the defendants to send the plaintiffs affected a notice that their hearing rights are extended as a result of the

error, but relieving the defendants from reinstating their AFDC and/or MA benefits for February, 1982, since the defendants acted in good faith in attempting to provide adequate and timely notice to these plaintiffs.

Dated this 2nd day of February, 1982.

BRONSON C. LA FOLLETTE
Attorney General

/s/ WALTRAUD A. ARTS
WALTRAUD A. ARTS
Assistant Attorney General

Attorneys for Defendants

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